

BEFORE THE
DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)	
Against:)	
)	
WILLIAM H. BENNETT, M.D.)	NO. D-2744
California Men's Colony Box A-E)	
San Luis Obispo, California 92409)	L-24423
Physician's and Surgeon's)	
Certificate No. G-23147)	
)	
Respondent.)	
)	

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Medical Quality Assurance as its Decision in the above-entitled matter.

A copy of Section 11522 of the Government Code and a copy of the Agency's Criteria Relating to Rehabilitation are appended hereto and made a part hereof.

This Decision shall become effective October 26, 1983.

IT IS SO ORDERED September 26, 1983.

DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____

MILLER MEDEARIS
Secretary-Treasurer

mh

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Against:)	
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WILLIAM H. BENNETT, M.D.)	NO. D-2744
California Men's Colony, Box A-E)	
San Luis Obispo, California 93409)	L-24423
Physician's and Surgeon's)	
Certificate No. G-23147,)	
)	
Respondent.)	
)	

PROPOSED DECISION

This matter came on regularly for hearing before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings, at the California Men's Colony, San Luis Obispo, California on July 20, 1983 at 9:00 a.m. Antonio J. Merino, Deputy Attorney General, represented the complainant. Respondent appeared in person and was represented by Christopher W. Guenther, Attorney-at-Law. At the outset of the hearing respondent made a motion for a continuance of said hearing. Complainant opposed said motion. The motion was denied. No evidence was offered to support the charges contained in paragraphs 10 and 11 of subject accusation and, accordingly, respondent's motion to strike said paragraphs was granted and said paragraphs were stricken in their entirety.

Thereafter, oral and documentary evidence and evidence by way of official notice and stipulation was received and the matter was then argued and submitted. The Administrative Law Judge now finds the following facts:

I

Complainant, Robert G. Rowland, Executive Director of the Board of Medical Quality Assurance of the State of California, brought subject Accusation solely in his official capacity.

II

On July 26, 1961, respondent William H. Bennett, M.D. (hereinafter "respondent"), was issued physician's and surgeon's certificate number G-23147, by the Board. At all times pertinent hereto, said certificate was, and currently is, in full force and effect.

III

On or about July 14, 1980, in the Superior Court of Orange County, the respondent was found guilty after a jury trial of violating Penal Code Sections 217 (assault with intent to commit murder) and 12022.7 (intent to inflict and infliction of great bodily injury) on January 23, 1980; Section 245, subdivision (a) (assault with deadly weapon and force likely to produce great bodily injury) on January 24, 1980; Section 245, subdivision (b) (assault with deadly weapon and by means of force likely to produce great bodily injury on peace officer) on January 24, 1980; and Section 12020.5 (use of firearm) in conjunction with each of the aforesaid violations. On August 8, 1980, the court pronounced judgment, sentencing respondent to serve a total of eleven years in state prison.

IV

The crimes set forth in Finding III are crimes which are substantially related to the qualifications, functions and/or duties of a physician and surgeon.

V

A. Respondent, fifty-two years of age, is now incarcerated at the California Men's Colony, San Luis Obispo. He expects to be released in or about April, 1986. There is a possibility that he will have an earlier release date, that is, in or about April, 1985.

B. Prior to said criminal conduct set forth in Finding III, respondent had a history of mental illness dating back to 1962. At or about that time he voluntarily sought and received professional psychiatric help and treatment. He voluntarily committed himself for treatment in 1962, 1963 and 1966. Sometime subsequent thereto, he was committed, involuntarily, for treatment in 1978. At a time prior to, but near said criminal conduct respondent, by his own admission ". . . became delusional (and) lost insight and judgment. . . ."

C. Respondent has a work history, as a physician, commencing in or about 1960 as an intern at Los Angeles County General Hospital. Subsequent thereto he has held medical positions with a number of organizations including Kaiser Hospital, the Los Angeles County Health Department, the United States Army, and the Los Angeles Unified School District.

D. Respondent has suffered no prior discipline of his certificate. Respondent has no prior criminal record.

VI

A. During his incarceration respondent has undertaken the study of vocational electronics and has received, to date, a grade "A" (the highest grade) in all "attitudes", to wit; adaptability, conduct, cooperation, dependability, effort and initiative and a "total" grade of A for the period January, 1983 to March, 1983. According to his instructor "his attitude, work habits and attendance are outstanding."

B. The facts set forth in paragraph A are a start toward rehabilitation. However, there is insufficient time since said criminal conduct to the present to allow a clear and convincing record of substantial rehabilitation. In light of said criminal conduct, and in the absence of a record of substantial rehabilitation the only reasonable order that can be made herein is the one which follows hereinafter.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

I

Physician's and Surgeon's certificate No. G-23147, issued to respondent William H. Bennett is subject to discipline pursuant to Section 2236, subdivision (a) by reason of Findings III and IV, collectively.

II

The standard of proof employed by the Administrative Law Judge, as trier of fact herein, is the "clear and convincing" standard as set forth in Ettinger v. BMOA (1982) 135 CA 3d 863. In light of Ettinger the preponderance of the evidence standard as defined in BAJI 2.60, California Jury Instructions, Civil, is inapplicable.

* * * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Physician's and surgeon's certificate No. G-23147, heretofore issued by the Board to William H. Bennett, is revoked.

I hereby submit the foregoing which constitutes my Proposed Decision in

the above-entitled matter, as a result of the hearing had before me on July 20, 1983, at San Luis Obispo, California, and recommend its adoption as the decision of the Board of Medical Quality Assurance.

DATED: 7/20/83

Richard J. Lopez
RICHARD J. LOPEZ
Administrative Law Judge
Office of Administrative Hearings

RJL:mh

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LESLIE ANNE LEDERMAN

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4 Los Angeles, California 90010
5 Telephone: (213) 736-2020

6 Attorneys for Complainant

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8 BEFORE THE
9 DIVISION OF MEDICAL QUALITY
10 BOARD OF MEDICAL QUALITY ASSURANCE
11 DEPARTMENT OF CONSUMER AFFAIRS
12 STATE OF CALIFORNIA

13 In the Matter of Accusation
14 Against:

) NO. D-2744

15 WILLIAM H. BENNETT, M.D.
16 California Men's Colony, Box A-E
17 San Luis Obispo, California 93409
18 Physician's and Surgeon's
19 Certificate No. G-23147,

) ACCUSATION

20 Respondent.

21 Complainant, Robert G. Rowland, alleges as follows:

22 1. He is the Executive Director of the Board of
23 Medical Quality Assurance of the State of California
24 (hereinafter the "board"), and brings this accusation solely in
25 his official capacity.

26 2. On or about July 26, 1961, respondent William H.
27 Bennett, M.D. (hereinafter "respondent"), was issued
physician's and surgeon's certificate number G-23147, by the

1 board. At all times pertinent hereto, said certificate was,
2 and currently is, in full force and effect.

3 3. Sections 2003 and 2004 of the Business and
4 Professions Code (formerly §§ 2100.5 and 2100.6) together
5 provide, in pertinent part, that there is a Division of Medical
6 Quality (hereinafter the "division") within the board
7 responsible for the enforcement of the disciplinary provisions
8 of the Medical Practice Act (ch. 5 of div. 2 of the Bus. &
9 Prof. Code), the administration and hearing of disciplinary
10 actions, carrying out disciplinary actions appropriate to
11 findings made by a medical quality review committee, the
12 division or an administrative law judge, and suspending,
13 revoking or otherwise limiting certificates after the
14 conclusion of disciplinary actions. (Hereinafter, all
15 statutory references are to the Business and Professions Code,
16 unless otherwise specified.)

17 4. Sections 2220, 2227 and 2234 (formerly sections
18 2360, 2361 and 2372) authorize the division to suspend or
19 revoke a physician's and surgeon's certificate, or take other
20 disciplinary action against a certificate holder who is guilty
21 of unprofessional conduct.

22 5. Section 2220 provides that the division may take
23 action against all persons violating the Medical Practice Act
24 (Bus. & Prof. Code §§ 2000 et seq.); that the division shall
25 enforce and administer the provisions of article 12 of the
26 Medical Practice Act as to physician and surgeon certificate
27 holders; and that the division shall have

1 all powers granted in the Medical Practice Act for these
2 purposes.

3 6. Section 2234, subdivision (a) (formerly § 2361,
4 sub. [a]) provides that violating or attempting to violate,
5 directly or indirectly, or assisting in or abetting the
6 violation of, or conspiring to violate, the Medical Practice
7 Act, constitutes unprofessional conduct.

8 7. Section 2296 (formerly § 2416) provides that
9 whenever it appears to the Division of Medical Quality that a
10 licensee is mentally ill to the extent the licensee's ability
11 to practice medicine safely is impaired, the division may order
12 the licensee to be examined by one or more physicians and
13 surgeons specializing in psychiatry designated by the division.

14 8. Section 2297 (formerly § 2417) provides that if a
15 licensee becomes mentally ill to such an extent as to affect
16 his ability to practice medicine safely, the division may take
17 action by suspending judgment, placing the licensee on
18 probation, suspending the licensee's right to practice for a
19 period not exceeding one year, revoking the licensee's
20 certificate, or taking such other action in relation to the
21 licensee as the division in its discretion deems proper.

22 9. Section 2236, subdivision (a) (formerly § 2383)
23 provides that the conviction of any offense substantially
24 related to the qualifications, functions or duties of a
25 physician and surgeon constitutes unprofessional conduct.

26 10. Respondent is subject to discipline pursuant to
27 section 2297, in that he is mentally ill to such an extent as

1 to affect his ability to practice medicine safely. The facts
2 and circumstances are as follows:

3 A. Pursuant to the "Petition for an Order to Submit
4 to Psychiatric Examination", the "Order" and the "Notice of
5 Psychiatric Examination", in case number P-42 before the
6 division, entitled "In re the Matter of the Order Directing
7 William H. Bennett, M.D., Physician's and Surgeon's
8 Certificate No. C-23147 to be Examined by Physicians
9 Specializing in Psychiatry", attached hereto as "exhibit A"
10 and herein incorporated by reference as though fully set
11 forth at this point, respondent submitted to a psychiatric
12 examination conducted by Robert A. Faguet, M.D.
13 (hereinafter "Dr. Faguet), on or about March 6 - 7, 1981,
14 at the California Men's Colony, San Luis Obispo, California.

15 B. Pursuant to said examination, Dr. Faguet concluded
16 that respondent has become mentally ill to such an extent
17 as to affect his ability to safely practice medicine. Dr.
18 Faguet's report is attached hereto as exhibit B, and is
19 herein incorporated by reference as though fully set forth
20 at this point.

21 11. Respondent is further subject to discipline
22 pursuant to sections 2220 and 2234, subdivision (a), in that
23 respondent refused to fully comply with the order of the
24 division that he submit to a psychiatric examination. The
25 facts and circumstances are as follows:

26 /

27 /

1 A. The allegations contained in paragraph 10 are
2 herein incorporated by reference as though fully set forth
3 at this point.

4 B. On or about March 6 - 7, 1981, respondent refused
5 to submit to psychological testing, as requested by Dr.
6 Faguet pursuant to and as part of Dr. Faguet's psychiatric
7 examination of respondent.

8 12. Respondent is further subject to discipline
9 pursuant to section 2236, subdivision (a). The facts and
10 circumstances are as follows:

11 A. On or about July 14, 1980, in the Superior Court
12 of Orange County, the respondent was found guilty after a
13 jury trial of violating Penal Code sections 217 (assault
14 with intent to commit murder) and 12022.7 (intent to
15 inflict and infliction of great bodily injury) on January
16 23, 1980; section 245, subdivision (a) (assault with deadly
17 weapon and force likely to produce great bodily injury) on
18 January 24, 1980; section 245, subdivision (b) (assault
19 with deadly weapon and by means of force likely to produce
20 great bodily injury on peace officer) on January 24, 1980;
21 and section 12020.5 (use of firearm) in conjunction with
22 each of the aforesaid violations. On or about August 8,
23 1980, the court pronounced judgment, sentencing respondent
24 to serve eleven years in state prison.

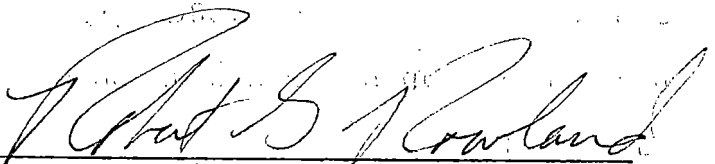
25 B. Said offenses are substantially related to the
26 qualifications, functions and/or duties of a physician and
27 surgeon.

1 WHEREFORE, complainant requests that the division hold
2 a hearing on the matters alleged herein, and that, following
3 said hearing, the division issue a decision:

4 1. Suspending or revoking physician's and surgeon's
5 certificate number G-23147 heretofore issued to respondent
6 William H. Bennett, M.D.: and

7 2. Taking such other action as it deems proper.

8 DATED: May 8, 1981.

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14 ROBERT G. ROWLAND
15 Executive Director
16 Board of Medical Quality Assurance
17 State of California

18 Complainant
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